IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 55 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KETAN CONSTRUCTION LTD. - Petitioner(s)
Versus
ESSAR OIL LTD. - Respondent(s)

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Appearance :
MR NAVIN K PAHWA for Petitioner(s) : 1,
MR SUNIT S SHAH for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 13/10/2006

ORAL JUDGMENT

By way of this petition, the petitioner company has prayed for an appropriate order of winding up of the respondent company under the provisions of the Companies Act, 1956.

2. After the matter was fully argued, Shri Pahwa, learned advocate appearing on behalf of the petitioner company, on going through the affidavit-in-reply filed on behalf of the respondent company, more particularly para 6, has submitted that the petitioner company is ready and willing to forgo interest on Rs.50,95,251/- upto today and the petitioner has no objection if the amount of Rs.50,95,251/-is deposited by the respondent company in a separate bank account, in a fixed deposit and the said deposit would be subject to the final assessment by the Sales Tax Authority and if ultimately, any liability arises under the Sales Tax, then in that case, the amount towards the said liability be appropriated from the said deposit and if ultimately, on conclusion of the final assessment, if it is found that the Sales Tax is not levyable and/or lesser amount is levyable, in that case, the balance amount from the fixed deposit with the interest from today, be refunded/paid to the petitioner company.

3. Shri Sunit Shah, learned advocate appearing on behalf of the respondent company has submitted that as such the respondent company from the very beginning and more particularly para 6 of the affidavit-in-reply

itself, the respondent company is ready and willing to pay the said deposit amount to the Sales Tax department right now or in the alternative earmark the said amount by keeping the same separately with their bankers. He has also further submitted that the assessment under the Sales Tax should be final assessment.

4. Considering the above submissions as well as the affidavit-in-reply filed on behalf of the respondent company, more particularly para 6, which is reproduced hereinabove, let the amount of Rs.50,95,251/- be put in a separate fixed deposit by the respondent company and the same shall be subject to the final assessment under the Sales Tax Act. It is also further observed that if ultimately on final assessment, it is found that the Sales Tax is levyable, then the said amount of Sales Tax to be appropriated from the aforesaid fixed deposit and it will be open for the respondent company straight way to make the payment on the basis of the said assessment to the State Government accordingly, immediately. However, it will be open for the petitioner to challenge the said assessment before the appropriate forum in accordance with law and on merits. However, if ultimately, any order of assessment is passed, in that case, at the first instance, the respondent company will

be paying the said amount to the Sales Tax Authority from the said fixed deposit subject to challenging the same by the petitioner and on succeeding, getting the refund under the provisions of the Sales Tax Act. If on final assessment, it is found that the Sales Tax is not levyable and/or any lesser amount is payable towards the Sales Tax, in that case, the respondent company to refund the said amount to the petitioner from the aforesaid fixed deposit with the interest accrued on fixed deposit subject to adjustment of the Sales Tax liability.

5. In view of the above, the present company petition is disposed off.

(M.R.SHAH,J.)

shekhar/-